

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, MARCH 12, 2004  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Timothy Johns  
Mr. Ted Yamamura

Ms. Lynn McCrory  
Ms. Kathryn Inouye  
Mr. Gerald DeMello

**STAFF**

Ms. Dede Mamiya, Land  
Mr. Walter Ikehara, Aquatic Resources

Mr. Sam Lemmo, OCCL  
Mr. Andrew Monden,  
Engineering

**OTHERS**

Mr. William Wynhoff, Deputy Attorney General  
Ms. Yvonne Izu, Deputy Attorney General  
Mr. Randy Vitousek, D-10  
Ms. Linnel Nishioka, D-16  
Ms. Deborah Jackson, D-16  
Mr. Gerald Park, K-2  
Mrs. Lisa Hogg, K-2

Ms. Mary Martin, D-12  
Mr. Warren Lee, D-16  
Mr. Dickey Nelson, D-16  
Mr. James Hogg, K-2

{Note: language for deletion is [bracketed], new/added is underlined}

**Item D-10: Grant of Perpetual, Non-Exclusive Easement to Rutter/KW Kohanaiki, LLC for Access and Utility Purposes; Cancellation of Grant of Easement No. S-4830; Consent to Mortgage, Kohanaiki, North Kona, Hawaii, TMK: (3) 7-3-09: por. of Mamalahoa Trail.**

Dede Mamiya Administrator of the Land Division made it known the applicant currently holds Term Easement No. S-4830 for access purposes. In January 2004 the applicant obtained a Conservation District Use Permit from the Board for the new easement alignment. This new alignment runs over Mamalahoa Trail. Ms. Mamiya recommended the Board authorize the issuance of a perpetual, non-exclusive easement to Rutter/KW Kohanaiki, LLC, authorize the cancellation of Grant of Easement No. S-4830 and authorize a consent to mortgage.

Randy Vitousek attorney for the applicant added that the applicant has obtained a Special Management Area (SMA) Use Permit for the proposed residential development. The SMA specifically includes this easement and the improvements in the easement.

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item D-12: Consent to Assign Homestead Lease No. 17, Irwin K. Keliipuleole, Assignor, to Eleonora Edith Arioli Keliipuleole, Assignee, Palolo, Honolulu, Oahu, TMK: (1) 3-4-3:10.**

Ms. Mamiya communicated on February 24, 2004, Mr. Irwin Keliipuleole died. Prior to passing away Mr. Keliipuleole signed an assignment to transfer the lease. She went on to note according to Section 171-99 (e) the Homestead leases are assignable. Ms. Mamiya recommended the Board consent to the assignment of Homestead Lease No. 17.

Mary Martin attorney for the applicant came forward to concur the term of the lease is 999 years.

**Unanimously approved as submitted (Inouye/McCrory).**

**Item D-16: Sale of Lease at Public Auction 65-year Lease of Water Rights for the Use of Groundwater from within the Keauhou Aquifer System for Use at the Hawaii Electric Light Company, Inc. Keahole Generator Plant Situated at Keahole, North Kona, Hawaii, TMK: 7-3-49:36.**

Ms. Mamiya conveyed all of the interested parties in this matter entered into a settlement in November 2003 terminating all pending litigations. This settlement ended over 10 years of lawsuits. Part of the settlement agreement included a commitment by Hawaiian Electric Light Company (HELCO) to give up 90% of its additional incremental potable water allotment to the County of Hawaii and from the County of Hawaii to the Department of Hawaiian Home Lands (DHHL). She told the Board before this can take place HELCO must secure a long-term source of water for its industrial use and emergency fire suppression. Ms. Mamiya reminded the Board in December 2003 approval for a revocable permit for water use was

granted to HELCO. The revocable permit was effective January 1, 2004. With regards to Section 171-58, HRS DHHL requested a reservation from the Keauhou aquifer in the amount of 1.59 mgd to cover its projected needs in West Hawaii. In closing Ms. Mamiya recommended the Board authorize the sale of a water lease by public auction.

Linnel Nishioka attorney for the applicant and Warren Lee President of Hawaiian Electric Light Company was present to answer any questions. Ms. Nishioka informed the Board they were comfortable with the way the auction process is set up. She also made it known today's decision does not limit the Department's ability to issue additional water licenses in Keauhou aquifer.

Deborah Jackson attorney representing Waimana Enterprise and Albert S.M. Hee came forward to provide verbal testimony. Ms. Jackson went over the history of her colleague representation of Waimana Enterprises and Mr. Hee. She informed the Board in December 2002 her colleague, Michelle Luke requested a contested case hearing on behalf of her clients. At that meeting the Board decided to grant the revocable permit to HELCO. Ms. Jackson contends the Board issued HELCO a revocable permit based on a 1994 Environmental Impact Statement (EIS). She went on to inform the Board subsequent to their December 12, 2003 meeting the Land Use Commission ordered HELCO to prepare a new EIS. Because the new EIS has yet to be prepared, Ms. Jackson feels the Board should not render a decision on this matter today, instead the Board should wait until the new EIS is prepared. Ms. Jackson went on to discuss the decision made by Justice Levinson in the Waiola O Molokai case and how she feels those issues are similar to this agenda item. In summary Ms. Jackson asked the Board to defer decision making at this time until the EIS is completed. She told the Board if they are inclined to make a decision today they should reject HELCO permit if not she will ask for a contested case hearing. Regarding the issue of standing she made it known the Hawaiian Supreme court has not made a determination of Waimana's position.

Dickey Nelson Vice President of Hui Kako Aina Hoopulapula, which represents the beneficiaries and Native Hawaiians on the Hawaiian Home Lands list. Mr. Nelson testified against the lease of water rights. He told the Board there are 482 acres of land in Keahole of which 153 acres about HELCO power plant. He feels these lands should be made available to Native Hawaiians on DHHL's waitlist. He noted his organization has serious concerns regarding the potential impacts that this water lease may have on their members rights to lease these lands. He feels there have not been adequate studies done on the impacts of the water license. Mr. Nelson noted Micah Kane (DHHL) spoke in support of this item on behalf of the DHHL and those individuals who already have homestead leases. In contrast he represents those individuals on the DHHL waitlist. He asked the Board to defer this matter until more information can be provided on this matter. But if a decision is made today, Mr. Nelson will request a Contested Case Hearing to receive more information.

A motion was made at 9:23 a.m. by Member Johns and second by Member McCrory to move into Executive Session to discuss with the deputy attorney general matters regarding the request for a contested case hearing as well as the impact of the EIS.

The meeting was resumed at 9:33 a.m.

Yvonne Izu of the Attorney General's Office clarified that contested case hearings on dispositions were not allowed. Hence a contested case hearing is not available.

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item D-2: Grant of 55-year Term, Non-Exclusive Easement to Mitch and Barbara Ann D'Olier for Seawall and Steps Purposes, Niu, Honolulu, Oahu, TMK: 3-7-02:40 seaward.**

Ms. Mamiya communicated during the sale process of the land a survey map revealed a seawall and concrete steps were shown to be encroaching about 157 square feet onto State lands. The Office of Conservation and Coastal Lands was contacted and they had no objections to the issuance of an easement. Ms. Mamiya recommended the Board authorize the issuance of a 55-year term, non-exclusive easement covering the subject area.

Carl Schlack attorney for Mitch and Barbara Ann D'Olier informed the Board the encroachment might have existed prior to 1962. He asked the Board if his client can provided documentation to this regard that the Department allows his clients to purchase the area rather than be giving an easement.

**Unanimously approved as submitted (Inouye/McCrory).**

**Item A-1: Minutes of February 27, 2004**

**Page 1, Others**

**Mr. Eric [~~Ginser~~] Guinther, E-5**

**Page 3, 5<sup>th</sup> paragraph**

**Eric [~~Ginser~~] Guinther**

**Unanimously approved as amended (Johns/Yamamura).**

**Item K-2: Construct James and Lisa Hogg Single Family Residence, 45-645 Kionaole Road, Kaneohe, Koolau Loa District, Island of Oahu, TMK: (1) 4-5-042:008.**

Sam Lemmo Administrator of the Office of Conservation and Coastal Lands pointed out the subject property is located at the intersection of Highway 3 and Kamehameha Highway. The applicant proposes to construct a single-family residence, driveway and landscaping. The Hawaiian Electric Company transformer abuts the subject parcel to the southwest. An Environmental Assessment was completed and the Department issued a FONSI. Mr. Lemmo recommended the Board approve this application to construct the Hogg Single Family Residence subject to the terms and conditions listed in the submittal.

Gerald Park came forward in representation of James and Lisa Hogg. Mr. Park told the Board it has not been determined if any trees will be cut. He noted a decision if any trees will be cut is pending the outcome of the Conservation District Use Application submitted by the applicant. The Environmental Assessment completed by the applicant stated if any trees were removed it would be replanted on site.

James Hogg informed the Board the only questionable area where trees might be cut is in the location of the garage. He noted there are several java plum trees that might need to be removed.

**The Board amended the following Recommendations:**

- 3) **The applicant will minimize visual impacts to abutting landowners by using appropriate lighting, house color, and landscaping. ~~[Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department].~~ Removal of trees shall be pursuant to a plan approved by the Department of Land and Natural Resources.**
- 14) **Obstruction of roads, ~~[trials]~~, trails and pathways . . .**
- 18) **The applicant shall provide a landscaping plan for approval by the Department of Land and Natural Resources ~~[plant appropriate trees]~~ to mitigate and minimize visual impacts to motorists traveling along the H-3 Interstate Highway.**

**Unanimously approved as amended (Inouye/McCrory).**

**Item K-1: Dismissal and Closure of Enforcement Action Regarding Alleged Unauthorized Placement of Rocks and Boulders on Shoreline by Richard and Thomas Carpenter and Cristina Foytich, Lanikai, Hawaii, TMK: (1) 4-3-004:098.**

Mr. Lemmo handed out a colored photograph of the Conservation District Use Area. At issue was whether the applicant placed the subject boulders within the Conservation District relative to the 2003 Shoreline Certification. In terms of the report and pictures it shows the shoreline delineation fell several inches makai of the rocks. Therefore Mr. Lemmo recommended the Board dismiss and close this case.

**Unanimously approved as submitted (McCrory/Inouye).**

**Item D-4: Issuance of a General Lease for Private, Noncommercial Pier to Ron Baer and the Issuance of a Term Easement to Ron Baer for the concrete steps and seawall, Situate Niu, Oahu, TMK: 3-7-02:50 (seaward).**

**The Board amended the submittal by replacing Ron Baer with Jeremiah Augustus Henderson everywhere the name appeared in the submittal.**

**Unanimously approved as amended (Inouye/McCrory).**

**Item D-5: Issuance of Revocable Permit to Ross J. Pacheco Sr. and Maryann Pacheco for Pasture Purposes, at Ookala, North Hilo, Hawaii, TMK: (3) 3-9-01: por. of 07.**

Ms. Mamiya made it known Staff would like to charge the Pacheco's rent from the time they occupied the subject area, which was in 1994. Ms. Mamiya recommended the Board deny the request for issuance of a revocable permit to Ross J. Pacheco and Maryann Pacheco for pasture purposes for reasons cited in the submittal.

**The Board amended the Recommendation Section to read as follows:**

**“1. Deny request for issuance of a revocable permit to Ross J. Pacheco and Maryann Pacheco (Applicant), for pasture purposes for reasons cited above, which are by this reference incorporated herein and further subject to the following:**

- a) Applicant shall vacate the premises within [~~30~~] 60-days from the date of this Board Action, or by a date as agreed upon with the Hawaii District Land Office;**
- b) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State[.];**
- c) Applicant shall pay rent in the amount of \$18 per month for the time period October 7, 1994 to the date the Applicant vacates the premises; provided that in the even of failure of the Applicant to remit such payment, this matter shall be turned over to the Attorney General for disposition, including all administrative costs.”**

**Unanimously approved as amended (DeMello/Johns).**

**Item D-11: Consent to Sublease General Lease No. S-3852, United States of America, Department of the Navy, Sublessor, to Nextel WIP Lease Corp. dba Nextel Partners, Sublessee, Waimea, Kekaha, Kauai, TMK: (4) 1-2-01:por. 6.**

Ms. Mamiya briefed the board and recommended the Board consent to the sublease under General Lease No. S-3852 between United States of America, Department of the Navy as Sublessor and Nextel WIP Lease Corporation dba Nextel Partners as Sublessee.

**The Board amended the section entitled “MONTHLY SUBLEASE RENTAL TO STATE OF HAWAII” to “ANNUAL SUBLEASE RENTAL TO STATE OF HAWAII.”**

**Unanimously approved as amended (McCrory/Johns).**

**Item D-15: Approval of Lease of Private Property with Molokai Ranch, Limited, on Behalf of the Department of Accounting and General Services, Information and Communication Services Division for Radio Station Facility Purposes, Puu Nana, Molokai, Maui, TMK: 5-1-02:por.04.**

**The Board amended the Annual Rent Section to read as follows:**

**~~“[To be determined at the fair market rent, as established in independent appraisal, paid for by the lessor, subject to review and approval by the Chairperson]~~ \$40,000 per year.”**

**Unanimously approved as amended (Yamamura/Johns).**

**Item D-1: Set Aside to City and County of Honolulu for Kawai Nui Gateway Park and Issuance of a Construction Right-of-Entry, Kailua, Koolaula, Oahu, TMK: 4-2-17: por. 20 and 4-4-34:25.**

**Item D-3: Consent to Assign General Lease No. S-5495, Karin E. Stroud-Joao as Personal Representative Authorized to Administer the Estate of Arthur Joao, Assignor, to Karin E. Stroud-Joao and Klaus Wilhelm-Heinz Radtke, Assignee, Waimanalo, Koolaula, Oahu, TMK: (1) 4-1-10:86.**

**Item D-6: Issuance of Revocable Permit to Waialeale Farms, Inc., Hoaleale, Ewa, Oahu, TMK: (1) 9-4-3:52.**

**Item D-7: Amend Prior Board Action of January 23, 2004 (Item D-6), Grant of Perpetual, Non-Exclusive Easement, Lot 21-A, Hanalei, Waimea (Kona), Kauai, TMK: (4) 1-9-5:41.**

**Item D-8: Grant of Perpetual, Non-Exclusive Easement to County of Hawaii for Traffic Signal Controller Equipment and Related Purposes; Amendment of General Lease No. S-4319 by Addition of Remnant, Waialea, South Hilo, Hawaii, TMK: (3) 2-4-25:001.**

**Item D-9: Amendment and Consent to Assign – Term, Non-Exclusive Easement, GLS No. S-4952, Yotsuo and Sakae Fuke, Assignor, to John and Ginger Hamilton, Assignee, Waialea, South Hilo, Hawaii, TMK: (3) 2-4-056:014.**

**Item D-13: Amend Prior Board Action of January 16, 1998, Item D-2, Authorization for Public Auction Sale of Diversified Agricultural Lease covering Government land situated at Lot 18, Hauula Homesteads, Hauula, Koolaula, Oahu, TMK: (1) 5-4-14:03.**

**Item D-14: Request for Extension of Notice of Default, General Lease No. S-3709, Oceanic Institute, Lessee, Waimanalo, Koolaula, Oahu, TMK: (1) 4-1-014:004 & 013.**

**Unanimously approved as submitted (Johns/DeMello).**

**Item F-1: Request for Approval to Amend/Extend an Agreement with the Research Corporation of the University of Hawaii (RCUH).**

**Unanimously approved as submitted (Johns/McCrory).**

**Item L-1: Approval for Award of Construction Contract – Job No. J00CH70B, Malaekahana State Recreation Area, ADA Barrier Removal, Oahu, Hawaii.**

**Unanimously approved as submitted (Inouye/McCrory).**

There being no further business, Chairperson Young adjourned the meeting at 11:05 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources